Massachusetts when a trial date originally assigned after a hearing by one justice of the Massachusetts Superior Court was reassigned by the Chief Justice of the State Court to another trial date (Petition, pp. 6, 9). Thereafter, the petitioner refused to have his deposition taken prior to the newly assigned State trial date and his action was dismissed and his appeal denied. *Anderson* v. *Froderman*, Mass. Adv. Sh. (1972) 1016, 282 NE 2d 893 (1972).

Argument

THE COMPLAINT FAILS TO STATE A CLAIM UNDER 42 U.S.C. § 1983 AND THE ACTION IS BARRED BY THE ELEVENTH AMENDMENT.

The Commonwealth of Massachusetts is not considered a "person" within the meaning of Title 42, U.S.C. §§ 1983 and 1985. See *City of Kenosha* v. *Bruno*, 41 U.S.L.W. 4819 (U. S. June 11, 1973).

This action is directed solely against the Commonwealth of Massachusetts and is barred by the Eleventh Amendment of the United States. *Employees of the Department of Public Health & Welfare, State of Missouri* v. *Department of Public Health & Welfare, State of Missouri*, 41 U.S.L.W. 4493, 4494 (U. S. April 18, 1973); *Parden* v. *Terminal Ry.*, 377 U. S. 184, 186 (1964); In re *Ayers*, 123 U. S. 443, 506 (1887) [for judicial immunity under § 1983, see *Pierson* v. *Ray*, 386 U. S. 547, 554 (1967)].[1]

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[1] In a prior hearing on September 29, 1971, entitled *Anderson* v. *Parker, Coulter, Daley & White et al.*, the Court of Appeals affirmed the dismissal of the petitioner's civil rights action against the Chief Justice of the State Court terming the action "patently frivolous," (Appendix B). The petitioner did not seek certiorari and would thus appear to be barred from relitigating the same issue under the well-established doctrine of collateral estoppel. *cf. Harris* v. *Washington*, 404 U.S. 55, 56 (1971).

The Court of Appeals was correct in concluding that the petitioner's appeal was "frivolous" and that "[e]ven if rectification was the result of an ex parte communication, we see no deprivation or impropriety rising to constitutional proportions and no causal nexus between the alleged impropriety and plaintiff's default, which he brought upon himself. Nor do we see elsewhere any federal cause of action." (Appendix A).

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 1973.

APPENDIX A.

United States Court of Appeals
For the First Circuit

No. 73-1068

JAMES T. ANDERSON,
PLAINTIFF, APPELLANT,
v.
EDWARD FRODERMAN et al.,
DFENDANTS, APPELLEES.

Before COFFIN, *Chief Judge*,
McENTEE and CAMPBELL, *Circuit Judges*.

MEMORANDUM AND JUDGMENT

Entered: May 8, 1973

The gist of this latest of plaintiff's complaints seems to be that because a presiding judge of a state superior court changed a trial date to allow time for the taking of a deposition, allegedly after an ex parte communication with defendants, the ultimate defaulting of plaintiff for failing to respond to a notice of deposition can be traced to this supposed violation of due process. Our sense from the records is that the earlier trial date may have been set contrary to the court's standing arrangements. Even if rectification was the result of an ex parte communication, we see no deprivation or impropriety rising to constitutional proportions and no causal nexus between the alleged impropriety and plaintiff's default, which he brought upon himself. Nor do we see elsewhere any federal cause of action.

The appeal being frivolous, the orders are affirmed under Local Rule 12.

By the Court:
(s) DANA H. GALLUP
Clerk.

APPENDIX B.

United States Court of Appeals
For the First Circuit

No. 71-1265.

JAMES T. ANDERSON,
PLAINTIFF, APPELLANT.

v.

PARKER, COULTER, DALEY AND WHITE et al.,
DEFENDANTS, APPELLEES.

ORDER OF COURT
Entered September 29, 1971

The Commonwealth of Massachusetts and Walter H. McLaughlin, Chief Justice of the Massachusetts Superior Court, move to dismiss the appeal against them under Local Rule 6.

The Commonwealth is not a party, and there is nothing to dismiss so far as it is concerned.

The claim against the Chief Justice is patently frivolous. The motion to dismiss as to him is allowed.

By the Court:
(s) DANA H. GALLUP
Clerk.

Enter:

[cc: Mr. Anderson and Messrs. McCarthy, Melick and Parker, Coulter, Daley and White et al.]